

Art Unit: 3752

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/08/2010 has been entered.

Claim Rejections - 35 USC § 103

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 16-17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. PG-Pub 2006/0113409 to Camilleri et al. in view of U.S. Patent #6,692,118 to Michele et al.

Camilleri discloses a paint reservoir system for a paint spray gun including an open top container (body (7)) and a cover (cover (4)) having a spout (duct (11)) that can be set on the container to close the top, the spout of said cover being mountable on a paint spray gun for gravity feed of the paint from the container to the spray gun, a first through member (valve duct (22)) formed integrally in a wall (bottom (3)) of the container for establishing a ventilation opening; a second member (plug (25)) being slidably receivable in the first through member and

Art Unit: 3752

having a tapered forward end (closing pin (28)) and an enlarged rear end (the body of plug (25)) that can engage the first through member; the plug is further mounted to the system (by being placed in the valve duct(22) or duct (11)) and can be readily removed from the reservoir system; the second member being position-able in the first through member in a first stable position in which the second member forms an airtight seal with the first through member (See Camilleri, Figure 5), and a second stable position in which the second member is partially withdrawn from the first through member and an air passage is formed between the first and second members enabling air relief of the container (See Camilleri, Figure 4).

Camilleri further discloses the first through member having a forward end (the half of the duct closest to bottom (3)) and a rear end (half of duct furthest from the bottom (3)), where the through member is a tubular cylinder that's perpendicular to the bottom of the container, and the first through member being integrally formed with the bottom of the container. The tubular cylinder also including a central axis with an outer surface and an inner surface that bounds and defines an interior space having a preselected cross section and shape and defining a passageway through the wall.

Camilleri however fails to disclose a puncturable membrane formed in integrally with the wall of the container for establishing a sealed but readily puncturable ventilation opening, where the membrane consists of a material that is one of a lower strength than the material of the container wall or a smaller thickness than the container wall.

However, Michele teaches it's known to provide a membrane (piercing area (8)) that is more easily pierced than the container to be pierced by a pointed tool, in order to provide a fluid tight sealed device that is readily puncturable with a pointed tool when the device is intended to be used.

Art Unit: 3752

Therefore, It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the valve duct of Camilleri with a membrane capable of being pierced by the plug (25) as taught by the Michele reference as such modification would allow the device to be sealed prior to being used but readily puncturable before intending to be used.

4. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. PG-Pub 2006/0113409 to Camilleri et al. in view of U.S. Patent #6,692,118 to Michele et al. as applied to claim 17 above, and further in view of U.S. PG-Pub 2007/0205305 to Vagedes.

Camilleri in view of Michele discloses the invention as described above including the membrane sealing the rear end of the tubular cylinder but fails to disclose the forward end of the tubular cylinder projecting into the interior of the cylinder.

However, In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 19665) (The court held that the configuration of the claimed disposable plastic nursing container was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed container was significant. In the instant application it would be an obvious matter of design choice to modify the Camilleri reference to have the tubular cylinder project into the interior of the container.

Further proof of design choice can be seen in the Michele reference, which discloses it's known to have a tubular cylinder sealed with a membrane and have the tubular cylinder continue on the forward end (side closer to the liquid in the container). Vagedes also discloses that it's known to form a reservoir where there is a tubular cylindrical protrusion inward to the reservoir that functions as a vent valve for the gravity fed reservoir.

Art Unit: 3752

5. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. PG-Pub 2006/0113409 to Camilleri et al. in view of U.S. Patent #6,692,118 to Michele et al. as applied to claim 19 above, and further in view of U.S. Patent #5,582,350 to Kosmyna et al.

Camilleri in view of Michele disclose the invention as described above but fail to disclose the pointed tool being attached to the cover by a tear-off bracket.

Kosmyna teaches it's known to use a tear-off bracket (tether (68) is capable of being torn off) to connect two components together.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a tear-off bracket as disclosed by Kosmyna as such bracket would allow the tool to be retained by the container's cover until it's time of first usage where it could be torn off to create and plug the ventilation hole.

Response to Arguments

6. Applicant's arguments with respect to claims 16-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN JONAITIS whose telephone number is (571)270-5150. The examiner can normally be reached on Monday - Thurs 6:30am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3752

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free)? If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JUSTIN JONAITIS/
Examiner, Art Unit 3752
March 30, 2010

/Dinh Q Nguyen/
Primary Examiner, Art Unit 3752